

**Safety-Kleen Corporation and Local 707, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Frank Guillot.** Cases 29-CA-9944 and 29-CA-9944-2

29 March 1984

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS

On 28 July 1983 Administrative Law Judge Howard Edelman issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Safety-Kleen Corporation, Amityville, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel correctly notes that the judge erred in stating that employee Mulvey told Guillot that employee Santangelo, rather than employee Canazarro, had informed Supervisor Hayes that Guillot was responsible for initiating contact with the Union. This error is insubstantial and does not affect our determination that Hayes' subsequent statement to Guillot ("Frank, you and I both know who started the Union") did not violate Sec. 8(a)(1) in the circumstances of this case.

**DECISION**

**STATEMENT OF THE CASE**

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me in Brooklyn, New York, on March 21, 1983.

On September 7, 1982,<sup>1</sup> and September 10, Local 707, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union), and Frank Guillot, an individual, herein called Guillot, filed unfair labor practice charges against Safety-Kleen Corporation (the Respondent), alleging violations of Section

8(a)(1) and (3) of the Act. On October 22, following a Regional investigation, a complaint issued alleging that the Respondent had threatened its employees with discharge, gave the impression to employees that it was keeping their union activities under surveillance, and discharged employee Guillot because of his activities on behalf of the Union, in violation of Section 8(a)(1) and (3) of the Act.

Briefs were filed by counsel for the General Counsel and counsel for the Respondent. On consideration of the entire record, the briefs, and my observation of the demeanor of the witnesses, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a corporation, duly organized under and existing by virtue of the laws of the State of Wisconsin. The Respondent maintains offices and places of business throughout the United States, including a principal office and place of business in the city of Elgin, State of Illinois, and a facility in the town of Amityville, county of Suffolk, State of New York, herein called the Respondent's Amityville facility, where it is and has been at all times material herein engaged in the business of cleaning industrial equipment and the sale of related cleaning materials. During the past year, which period is representative of its annual operations generally, the Respondent in the course and conduct of such operations purchased and caused to be transported and delivered to its Amityville facility chemical solvents and various other cleaning materials, valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were delivered to this facility in interstate commerce directly from States of the United States other than the State of New York.

The Respondent admits and I find that it is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. LABOR ORGANIZATION**

The Respondent admits and I find that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

**III. THE RESPONDENT'S OPERATION**

As set forth above, the Respondent is engaged in the business of cleaning industrial equipment for various industrial customers. In this connection, the Respondent installs industrial washers, and services this equipment on a regular basis. The Respondent also sells various cleaning materials to its industrial customers. The Respondent's customers in large part consist of gasoline service stations, repair shops, automobile dealers, and machine shops.

The Respondent has approximately 165 branches located throughout the United States. Tom Masters, regional manager for the New York region, an admitted supervisor within the meaning of Section 2(11) of the Act, is in overall charge of seven facilities located throughout the

<sup>1</sup> All dates herein are 1982 unless otherwise specified.

New York metropolitan area, including the Respondent's Amityville facility.

Timothy Hayes, an admitted supervisor, is the manager and in overall charge of the Respondent's Amityville facility.

As of May, the Respondent, at its Amityville facility, employed a total of five sales service representatives. The representatives are assigned various routes encompassing Nassau and Suffolk Counties in Long Island, New York. Their duties in connection with these routes include servicing the Respondent's leased equipment which involve cleaning the equipment and replacing the old solvent with fresh solvent. Additionally they sell to the customers on their routes various cleaning powders and other cleaning solvents, and attempt to obtain new customers in their route area. The service representatives are paid a base weekly salary and a commission for the units serviced, sales of industrial cleaners, and new installations.

At the time of hire, the Respondent's representatives are given a brief period of training. This training includes viewing films and slides designed to orient them to the job. The representatives are also furnished a booklet entitled, "Why Should I Choose Safety-Kleen," which explains the opportunities afforded representatives for continued growth. This booklet includes a section setting forth performance standards. These performance standards set forth are: "(a) Placement of 15 to 25 new machines per period. [A period is defined by the Respondent as every 4 weeks.] (b) Service 3,000 to 3,500 machines per year. (c) Sales of \$35,100 in allied products per year. This figure comes to approximately \$135 per day based on a five day work week."

However, these performance standards are not rigidly adhered to. In this connection, Regional Manager Tom Masters testified that these figures are goals to strive for, rather than fixed quotas which must be reached. For example, Masters testified that concerning the standard that representatives sell \$135 a day worth of industrial cleaners, he was happy if the representatives in his region sold \$80 a day. Moreover, the Respondent's booklet does not indicate that failure by the representatives to meet these so-called "performance standards" will result in their termination.

#### IV. UNION ORGANIZATION

Guillot was hired by the Respondent on May 5 as a sales service representative. During the hours of 9 a.m. to 5 p.m. the representatives service the customers on their route. At the end of the day they return to the office where they spend a brief period of time performing necessary paperwork. Following this paperwork, they spend several hours in the warehouse cleaning machines and unloading trucks. Guillot testified that the representatives generally grumbled about working in the warehouse following completion of their paperwork, complaining that they were not being paid for this time.

On or about June 5, Guillot contacted the Respondent's main office in Elgin, Illinois, and spoke with Manager Dale Vranik. Guillot told Vranik that the representatives employed at the Respondent's Amityville facility felt that they should be paid for working time spent in

the warehouse following the completion of their run. Vranik replied that he would get back to Guillot.

In mid-June, Vranik visited the Respondent's Amityville facility and met with the sales representatives. During this meeting, Vranik explained that the employees' commission covered the additional hours spent working in the warehouse.

Sometime in early July, Guillot and representatives Tony Santangelo and Tony Canazzaro were unloading a truck in the Respondent's warehouse when Canazzaro suggested that the employees needed union representation. Guillot spoke with the truckdriver, employed by the trucking company then unloading, and asked him what labor organization he was represented by. The driver replied that he was represented by the Union. Guillot gave the driver his name and phone number and asked if the Union would contact him concerning representation of the sales service representatives.

Several nights later, union representative Gene Hainley telephoned Guillot and set up a meeting of the representatives for some time during the following week. This meeting took place as scheduled in a nearby local diner. During the meeting, Hainley obtained signed authorization cards from Guillot, Canazzaro, and Santangelo. On July 12, the Union filed a petition with the National Labor Relations Board seeking to represent the Respondent's representatives employed at the Amityville facility. A stipulation was entered into by the parties and an election scheduled for August 26.

Following the filing of the petition described above, the Union held several other meetings of employees. At one of these meetings, unit employee Bruce Mulvey, a senior representative, informed Guillot that he was present during a conversation between Tim Hayes, Respondent Amityville manager, and unit employee Tony Santangelo, wherein Santangelo apparently voluntarily informed Hayes that Guillot was responsible for initially contacting the Union.

Sometime shortly before the election scheduled for August 26, Supervisor Hayes came over to Guillot at the end of the workday and stated, "Frank, you and I both know who started the Union."<sup>2</sup> Guillot did not reply.

On August 26, the National Labor Relations Board election was conducted. Guillot acted as the Union's observer. The Union won the election and was ultimately certified. The Respondent and the Union thereafter engaged in collective-bargaining negotiations which resulted in a collective-bargaining agreement executed between the parties in November.

Within minutes after the election had been completed, and the Board agent conducting the election had left the Respondent's facility, Regional Manager Tom Masters assembled the representatives. According to the testimony of Guillot and Santangelo, Masters began the meeting by stating, "Unfortunately, this is America, it's a free country and you do have the right to vote." He followed this opening statement by informing the employees that from now on, the Respondent would enforce its "production quotas," a reference to the performance stand-

<sup>2</sup> Hayes did not testify in this hearing.

ards described above and that employees not meeting these "quotas" would be terminated. Guillot testified that the meeting was a brief one, lasting 1 or 2 minutes while Santangelo testified the meeting lasted for perhaps 15 minutes.

Both employees testified that prior to this meeting no respondent representative had ever discussed "production quotas" with them, nor had they been advised that if they did not meet specified "production quotas" or "performance standards," described in the Respondent's booklet, that they would be terminated.

Masters testified that he had decided to meet with the representatives immediately following the election because the Amityville facility's performance had gone down during the union campaign and he wanted to talk to them about it. Additionally, he had observed some filter bags in the dumpster, which was contrary to the Respondent's established procedure. Masters met with the employees immediately following the election and told them that they had had the opportunity to cast their ballots, this was America, the election was over, and it was time to get back to business. He pointed out to them that their sales of cleaners had been declining lately and made reference to the "performance standards" set out in the Respondent's booklet. He advised the employees that he had not pressed these "quotas" during the campaign because he knew they were under a lot of strain concerning the election. He then spoke briefly to the employees concerning the filter bags. He testified the meeting lasted approximately 15 minutes.

I credit the testimony of Guillot and Santangelo concerning the events taking place at the meeting described above. The testimony of Santangelo and Guillot corroborated each other. Moreover, Masters' statement as described by Guillot and Santangelo impressed me as an angry and spontaneous and believable reaction to the union victory.

#### V. THE DISCHARGE OF GUILLOT

Sometime on or about the beginning of June, prior to any union activity, Guillot was preparing to commence his route for the day. Hayes asked him to collect a delinquent account from Amityville Volkswagon, one of the Respondent customers on Guillot's route that day. When Guillot arrived at Amityville Volkswagon, he went in to the office where a secretary was engaged in conversation with an unidentified man. Guillot testified that he informed the secretary that the Respondent's balance was overdue and asked for a check to cover this overdue balance. The secretary informed him she would give him a check for a partial balance which she did. When Guillot completed his route that day and returned to the Respondent's facility, Supervisor Hayes asked him what happened at Amityville Volkswagon that day. Guillot replied nothing. He had serviced the shop and got a check. Hayes informed him that the secretary had called him up after he left and was upset with his treatment of her. According to Hayes, the secretary complained that Guillot had cursed at her. Hayes informed Guillot at this time that he was going out to Amityville Volkswagon the following day to talk to the secretary and straighten out the situation, but in view of his complaint he did not want

him servicing this account any longer. Following this incident, the Amityville Volkswagon stop was taken off Guillot's route. Guillot did not receive a written warning for this incident.

In late August, several days before the National Labor Relations Board election was scheduled, Guillot stopped at Al & Al Amoco, a gas station, and a customer of the Respondent, to service the Respondent's equipment. He parked his truck in the station near the gas pumps. At this point, the dealer came over and told Guillot to move his truck. Guillot testified that he informed the dealer that there was no place in the street where he could park his truck. Guillot testified the dealer told him to "Stick it up his ass," but to get the truck out. Guillot drove off without servicing the stop. When he returned to the Respondent's facility, Tom Masters was there on a routine visit. Masters asked him casually how things went that day and Guillot testified that he told Masters what had taken place at the Al & Al Amoco station stop. Masters told him they would send representative Bruck Mulvey down to the gas station the following day to straighten the matter out. Masters also informed Guillot that he would not receive his commission in view of his failure to service the stop.

Masters testified that the following day he assigned Mulvey to service the Al & Al Amoco station and that when Mulvey returned, he told Masters that the dealer was very upset with Guillot's treatment of him. Masters then asked Hayes to contact the dealer and find out what the problem was. Hayes visited Al & Al Amoco and returned with a signed statement from the dealer dated August 31, which read:

One of your drivers block [sic] my gas pump. I asked him to move which resulted in an argument. Then he threatened to pull the machine out.

Masters testified that in view of the fact that this was the second similar incident involving a customer complaint concerning Guillot's conduct and treatment of customers, he decided to issue a written warning. Accordingly, a disciplinary notice was prepared on the Respondent's standard form for such warnings. The warning stated: "Your conduct is not with Company practices and policies for the following reasons": The reason set forth was: "Driver refused to move his truck from blocking gas pump—asked to park the truck by the curb while servicing the machine—driver refused to comply with customer request—argued with him and then threatened to pull the machine. Customer has asked that this man never service him again." The warning then concluded: "The following improvements are required . . . Attitude with customer must improve—antagonistic remarks—threat of pulling machines are to stop immediately." The warning was signed by Masters in the space at the bottom designated supervisor's signature. On September 1, Guillot reported for work. As he was setting up his route for the day, he was summoned into Hayes' office. He went into the office and met with Hayes and Masters. Masters handed him the disciplinary warning described above and asked him to sign it on the line next to his signature, which stated: "Copy received by: [Em-

ployee's signature]." Guillot read the disciplinary warning. Hayes asked him to sign it. Guillot testified that he informed Hayes and Masters that he would not sign the warning unless he could insert his version of the incident. Masters reminded him that this was the second such incident. Hayes then asked him again to sign the warning, stating to him, "and what we're going to do, we're going to change your territory to avoid this possibility happening in the future." Guillot testified that he again informed Hayes and Masters that he was not going to sign the warning and that Hayes said okay. Guillot left the office and returned to his truck. Guillot then testified that Hayes and Masters approached him at the truck and Masters stated, "You're refusing to sign this," Guillot replied, referring to the warning, that if they put down his version he would sign it. Masters told him that if he did not sign he would be terminated. Guillot replied, "I'm terminated?" Masters stated that he was terminated.

Masters' testimony in connection with this entire conversation is substantially different from that of Guillot. In this connection, Masters testified that Hayes explained to Guillot the results of his investigation concerning the incident at Al & Al Amoco station. He then showed him the statement executed by the dealer, and told him this was his second such incident involving a customer. He said that as a result, the Respondent had prepared a disciplinary warning. The warning was then handed to Guillot who read it. Masters asked him to sign the warning. Guillot threw down the warning and stated, "This is bullshit . . . the guys a fucking liar" and refused to sign. Masters told him this was a serious matter and questioned him as to why the customer would lie. He told Guillot that the Respondent would assign him to another route, and asked him again to sign the warning. Guillot told Masters and Hayes that they were conjuring up a "bullshit" excuse for writing him up; that they were "a couple of assholes"; and that they could "go fuck" themselves. At this point, Masters took out another disciplinary notice from his briefcase and told Guillot that if he did not sign the first warning, he could sign the second one for insubordination. Guillot replied, "Fuck you," got up, slammed the door, and left. Masters testified that following this exchange he looked at Hayes and stated he was not going to let an employee talk to them in this manner and told Hayes to terminate him immediately. Hayes followed Guillot out the door and terminated him.

Masters testified that the sole reason Guillot was discharged was his gross insubordination during the course of the meeting concerning issuance of the disciplinary warning. This gross insubordination consisted of Guillot's adamant refusal to sign the disciplinary warning, coupled with the profanity and abusive language directed to Masters and Hayes.

Masters further testified that the signing of the disciplinary warning was required so that the Respondent could establish in the future, if necessary, that the employee had received such warning.

#### IV. ANALYSIS AND CONCLUSION

The General Counsel contends that Hayes' statement to Guillot, "Frank, you and I both know who started this union" constitutes creating the impression of unlawful surveillance. However, Guillot testified that prior to this statement by Hayes, employee Bruck Mulvey had informed him that Mulvey had overheard employee Santangelo tell Hayes during a casual conversation that it was Guillot who had first contacted the Union. There is no evidence that Santangelo's statement was not voluntary.

The essential gravamen in connection with creating the impression of unlawful surveillance is that the employee had reasonable cause to believe that his union activity is being spied on by the employer. *Brooks Shoe Mfg. Co.*, 259 NLRB 488 (1981). In the instant case, Guillot had no reason to believe his union activities were being spied on by the Respondent. He was aware that Hayes knew of his initial contact with the Union and he was also aware that such knowledge was the result of an apparently voluntary statement by his fellow unit employee, Santangelo. In these circumstances, it could hardly be contended that Guillot reasonably felt that the Respondent was spying on his union activities. Accordingly, I conclude that Hayes did not create the impression of surveillance by his statement to Guillot. *Palby Lingerie, Inc.*, 252 NLRB 176 (1980).

The credited evidence established that within minutes following the election, which the Respondent lost, Masters assembled employees together and informed them that from now on the Respondent would enforce "production quotas" and that if the employees did not meet their "quotas" they would be "terminated." The evidence further established that while the Respondent did have "performance standards," such standards were merely goals that employees should aspire to, rather than quotas which were mandatory, and would result in their discharge if they were not met. In this connection, both Santangelo and Guillot testified that the Respondent's representatives had never informed them prior to this speech of such mandatory quotas. The Respondent's booklet does not establish that such "standards" were mandatory. Moreover, Masters conceded that he had considerably relaxed the Respondent's suggested "performance standards."

In view of the timing of the Respondent's statement, and in view of the absence of such mandatory quotas prior to the election, I conclude that the Respondent's statement was made in retaliation for the employees' vote, and constitutes an unlawful threat of discharge in violation of Section 8(a)(1) of the Act.

#### The Discharge of Guillot

The evidence established that Guillot was responsible for initially contacting the Union and acted as the Union's observer during the election. However, the evidence also established that, throughout the union campaign up and until the election, the Respondent committed no unfair labor practices nor engaged in any other actions displaying union animus. The single unlawful threat by the Respondent occurred immediately following the election. I conclude such threat was an angry,

spontaneous outburst, rather than being reflective of an intention by the Respondent to actually retaliate against prounion employees.

On the other hand, the evidence concerning Guillot's job performance established that within a 4-month period commencing on his employment in May, Guillot was involved in two separate, but similar incidents with the Respondent's customers, involving abusive language by Guillot directed at the Respondent's customers and a threat by Guillot to pull the Respondent's machine out of a customer's facility (Al & Al Amoco service station). In both of these incidents the customer requested that Guillot not service their facilities again. This second incident, involving Al & Al Amoco station, took place just a few days prior to the election on August 26 and was not fully investigated until August 31, following the election.

In view of the serious nature of these complaints, the Respondent could hardly be expected to leave them unremedied. Although Guillot did not receive a written warning after the first incident, a written warning after a second similar incident within a 2-1/2-month period is, in my opinion, clearly justified. I note that the issuance of such warning is not alleged in the complaint as an unfair labor practice.

An examination of the warning itself established that it was constructive in nature. In this regard, the warning did not call for any discipline, nor did it warn of possible future discipline. It merely set forth the nature of the complained of conduct and set forth the areas of performance in which Guillot must improve.

The evidence established clearly that the Respondent did not intend to discharge Guillot during the September 1 meeting. This is established conclusively by the contents of the warning letter and by the testimony of Guillot and Masters that during the meeting Hayes and/or Masters told Guillot that they would assign him to a different route. It is therefore clear that something unexpected took place during this meeting which precipitated Guillot's termination. In this connection, Masters testified that these unexpected circumstances consisted of Guillot's adamant refusal to sign the warning coupled by his extreme profanity directed at Masters and Hayes. Guillot admitted that he would not sign the warning notice unless he could insert his version of the Al & Al Amoco service station incident. I credit the testimony of Masters concerning Guillot's use of profanity during the September 1 meeting. In this connection, Guillot was not recalled as a witness to rebut Masters' testimony concerning such profanity. Moreover, such use of profanity by Guillot was consistent with the conduct complained of by the Respondent's customers. Further, Masters' testimony that it was only after Guillot unleashed a barrage of profanity directed at Masters and Hayes that Masters told Hayes to terminate Guillot is believable. Indeed in these circumstances, termination would be expected. On the other hand, Guillot's testimony that after he refused to sign the warning notice Hayes said it was okay, that Guillot then left the office and headed for his truck, and that it was only at this point that Hayes thereafter followed him out, requested once more that he sign the warning, and terminated him when he refused is simply not believable. I therefore conclude that the Respondent

discharged Guillot solely because of his insubordination during the September 1 meeting which consisted of refusing to sign and acknowledge receipt of a warning letter, coupled with extreme profanity directed against Masters and Hayes. I further conclude that the Respondent by discharging Guillot did not violate Section 8(a)(1) and (3) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(1) of the Act by threatening its employees with discharge if they became and remained members of the Union or if they gave any assistance and support to it.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, I shall recommend that it cease and desist from engaging in such unfair labor practices and take affirmative action provided in the recommended Order below, designed to effectuate the policies of the Act. On the foregoing findings of fact and conclusions of law and the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondent, Safety-Kleen Corporation, Amityville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Threatening its employees with discharge or other reprisals if they become or remain members of the Union or any other labor organization, or if they give any assistance and support to it.
  - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.
2. Take the following affirmative action which is necessary to effectuate the policies of the Act.
  - (a) Post at its place of business in Amityville, New York, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>4</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT threaten our employees with discharge or other reprisals if they become or remain members of the Union or any other labor organization, or if they give any assistance and support to it.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the Act.

SAFETY-KLEEN CORPORATION